

the time of the strike and what additional measures were taken, if any, to avoid strike;

(vii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

(viii) Estimated size and length of animal that was struck;

(ix) Description of the behavior of the marine mammal immediately preceding and following the strike;

(x) If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

(xi) Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

(xii) To the extent practicable, photographs or video footage of the animal(s).

(3) For deep penetration surveys, in the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise the LOA-holder of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following:

(i) If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise the LOA-holder that the shutdown around the animals' location is no longer needed.

(ii) Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises the LOA-holder that all live animals involved have left the area (either of their own volition or following an intervention).

(iii) If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the LOA-holder will be required to determine what measures are necessary to minimize that likelihood

(*e.g.*, extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

(4) If NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to the LOA-holder indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information. In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

(i) Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and

(ii) If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.*, within 48 hours and 50 km) and immediately after the discovery of the stranding.

[86 FR 5444, Jan. 19, 2021; 86 FR 18476, Apr. 9, 2021]

#### §217.186 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, prospective LOA-holders must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period not to exceed the expiration date of these regulations.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the LOA-holder must apply for and obtain a modification of the LOA as described in §217.187.

(d) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation)

## §217.187

## 50 CFR Ch. II (10–1–22 Edition)

on the species or stock and its habitat; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

(f) For LOA issuance, where either (1) the conclusions put forth in an application (*e.g.*, take estimates) are based on analytical methods that differ substantively from those used in the development of the rule, or (2) the proposed activity or anticipated impacts vary substantively in scope or nature from those analyzed for the rule, NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the differences, and solicit public comment before making a decision regarding issuance of the LOA.

(g) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within thirty days of a determination.

### **§217.187 Renewals and modifications of Letters of Authorization (LOA).**

(a) An LOA issued under §216.106 of this chapter and §217.186 for the activity identified in §217.180 shall be modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1)

of this section) that result in more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §216.106 of this chapter and §217.186 for the activity identified in §217.180 may be modified by NMFS under the following circumstances:

(1) NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures (after consulting with the LOA-holder regarding the practicability of the modifications) if doing so is practicable and creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from monitoring from previous years;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in an LOA issued pursuant to §216.106 of this chapter and §217.186, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within thirty days of the action.